



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 5, 2012

Ms. P. Armstrong
Assistant City Attorney
Criminal Law and Police Section
City of Dallas
1400 South Lamar
Dallas, Texas 75215

OR2012-17705

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 470350 (ORR# 2012-10487).

The Dallas Police Department (the "department") received a request for information related to a traffic accident involving two named individuals. You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.¹

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state

¹This letter ruling assumes the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

the release of the information you have marked would interfere with a pending criminal investigation. Based on your representations, we conclude the department may withhold the marked information under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Next, we address your claims under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. This exception encompasses information made confidential by other statutes. You contend the date of birth you have marked is confidential under section 552.101 in conjunction with section 521.051 of the Business and Commerce Code, which provides in part:

- (a) A person may not obtain, possess, transfer, or use personal identifying information of another person without the other person's consent and with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name.

Bus. & Comm. Code § 521.051(a) (formerly Bus. & Comm. Code § 48.101(a)). “Personal identifying information” means “information that alone or in conjunction with other information identifies an individual” and includes an individual's date of birth. *Id.* § 521.002(a)(1)(A). You assert the marked date of birth meets the definition of “personal identifying information” under section 521.002(a)(1) of the Business and Commerce Code. *See id.* § 521.002(a)(1). Section 521.051(a) of the Business and Commerce Code does not prohibit the transfer of another person's personal identifying information, however, unless the transfer is made with the intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name without that person's consent. *See id.* § 521.051(a). In this instance, the department's release of the information at issue would be for the purpose of complying with the Act and not “with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value[.]” *Id.* Therefore, section 521.051(a) of the Business and Commerce Code does not prohibit the department from transferring the information at issue in this instance. We therefore conclude the department may not withhold the marked date of birth under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code.

You also seek to withhold the marked date of birth under section 552.101 of the Government Code in conjunction with section 32.51 of the Penal Code, which provides in part:

- (b) A person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of:

- (1) identifying information of another person without the other person's consent;
- (2) information concerning a deceased natural person, including a stillborn infant or fetus, that would be identifying information of that person were that person alive, if the item of information is obtained, possessed, transferred, or used without legal authorization; or
- (3) identifying information of a child younger than 18 years of age.

Penal Code § 32.51(b).² "Identifying information" means "information that alone or in conjunction with other information identifies a person" and includes a person's date of birth. *Id.* § 32.51(a)(1)(A). You assert the marked date of birth meets the definition of "identifying information" under section 32.51(a)(1)(A) of the Penal Code. Section 32.51(b) does not prohibit the transfer of another person's identifying information, however, unless the transfer is made "with the intent to harm or defraud another[.]" *See id.* § 32.51(b). In this instance, the department's release of the information at issue would be for the purpose of complying with the Act and not with the intent to harm or defraud another. Therefore, section 32.51(b) of the Penal Code does not prohibit the department from transferring the requested information in this instance. We therefore conclude the department may not withhold the marked date of birth under section 552.101 of the Government Code in conjunction with section 32.51 of the Penal Code.

You also claim section 552.101 of the Government Code in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *See id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include information related to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. We note dates of birth of members of the public are generally not highly intimate or embarrassing. *See Open Records Decision No. 455 at 7 (1987)* (home addresses, telephone numbers, dates of birth not protected by privacy). You have failed to demonstrate the information you have marked is highly intimate or embarrassing and not of legitimate public interest. We therefore conclude the department may not withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy and must release that information.

²Although you contend the date of birth is made confidential by section 32.52 of the Penal Code, we understand you to mean section 32.51 based on the substance of your argument.

We note the submitted report contains license plate numbers. Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle title or registration issued by an agency of this state or another state or country.³ *See* Gov't Code § 552.130(a)(2). The license plate numbers we have marked fall within the scope of section 552.130, which protects personal privacy. As the requestor is acting on behalf of an insurance adjuster, she may be an authorized representative of the owner of the truck and trailer to which the marked Iowa license plate numbers pertain. To the extent the requestor is an authorized representative of the owner of the truck and trailer, she has a right of access to their Iowa license plate numbers under section 552.023 of the Government Code.⁴ *See id.* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). As it is not clear whether the requestor is the owner's authorized representative, we will rule conditionally. Thus, to the extent the requestor is an authorized representative of the owner of the truck and trailer, their Iowa license plate numbers must be released pursuant to section 552.023 of the Government Code. To the extent the requestor is not an authorized representative of the owner of the truck and trailer, the Iowa license plate numbers must be withheld under section 552.130 of the Government Code. In any event, the department must withhold the marked Texas license plate number under section 552.130.

In summary, the department (1) may withhold the information related to the pending investigation you have marked under section 552.108(a)(1) of the Government Code and (2) must withhold the marked license plate numbers under section 552.130 of the Government Code except to the extent the requestor has a right of access to the Iowa license plate numbers under section 552.023 of the Government Code. The rest of the submitted information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

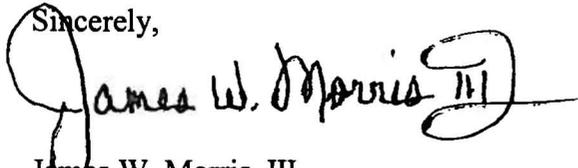
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

³This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

⁴Section 552.023 provides in part that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." Gov't Code § 552.023(a).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "III" at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 470350

Enc: Submitted documents

c: Requestor
(w/o enclosures)